



# Department of Justice

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## **JUSTICE DEPARTMENT APPROVES PLAN BY SECURITY INDUSTRY FIRMS TO EXCHANGE INFORMATION ABOUT RESOLVING THE YEAR 2000 COMPUTER ISSUE**

WASHINGTON, D.C. -- In a step that will help an important segment of the private sector prepare to face its Year 2000 computer issues, the Department of Justice today approved a proposal by the Securities Industry Association (SIA) to let its members and their computer services suppliers discuss and exchange information on the issue.

The Department's Antitrust Division, which was asked to consider the competitive implications of the private sector information-sharing proposal, approved the proposal because it would not directly lessen competition in the procurement of computer services, and did not involve the disclosure of pricing or customer information that would pose competitive risks.

The Department also said that the information exchanges should not diminish competition amongst the association's members and might even have procompetitive effects by reducing costs and/or speeding up resolution of Year 2000 issues.

The Department's position was stated in a business review letter issued by Joel I. Klein, Assistant Attorney General in charge of the Department's Antitrust Division.

The Securities Industry Association represents nearly 800 securities firms. Its members are active in all markets and phases of corporate and public finance, and include investment banks, broker-dealers, and mutual fund companies. They manage the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans.

There is a concern that, unless remedied, the Year 2000 problem could cause a breakdown in many computerized information systems utilized in the securities industry. Similar concerns have been expressed by others with respect to other industries and certain governmental activities. Indeed, the President has established a Council on the Year 2000 Conversion to encourage government and private industry to take the steps necessary to resolve potential Year 2000 transition problems in advance of January 1, 2000.

Many securities firms utilize computer systems designed with software programmed to operate with data fields that use two digits to indicate a given year. As a consequence, on January 1, 2000 these computer programs may interpret the double zero as either the year 1900 or zero rather than the year 2000.

The SIA has developed a comprehensive program to coordinate Year 2000 remediation efforts to increase the likelihood that the securities markets will function smoothly when the calendar changes to January 1, 2000. SIA's program has been and will be coordinated with the Securities Exchange Commission, bank regulators and various parties that provide services to the securities industry.

In order to assist its members with the Year 2000 transition, SIA proposes two types of information exchanges. The first would involve gathering information from manufacturers and vendors of computer software, hardware, and chips regarding their efforts to ensure that their products will be Year 2000 compliant. This information will be gathered and exchanged in a time-frame that will permit securities firms the opportunity to test their internal systems and infrastructure. Once compiled, this information will be made available to, and exchanged by, SIA members.

The second type of proposed information exchange would involve exchanges among SIA members concerning topics such as (1) the results of product tests performed on their systems,

(2) methods of remediating Year 2000 problems inherent in particular products, and (3) information about various vendors and their products. The information would be shared among SIA members and others that are part of the industry's Year 2000 project, such as regulators, exchanges, depositories and clearing companies.

To the extent possible, only factual information about testing and experiences will be exchanged. No price information will be exchanged. Vendors may be provided test information about their own products in order to allow them to respond to the information exchanged. In such instances, vendors would be provided only the information applicable to their products-- they would not have access to information exchanged about their competitors' products. Neither SIA nor its members will recommend in favor of, or against, the products of particular vendors. The exchanged information will be stated in non-judgmental terms to lessen the risk that the sharing of information could result in any anticompetitive consequences. SIA members will decide as individual entities how, or even whether, each will use the information.

The SIA asserts that neither sufficient resources nor time is available for each member firm individually to test every product it utilizes. Accordingly, the ability to disseminate and exchange information about Year 2000 compliance, particularly test results and remediation plans, is viewed by SIA as critical to the industry's ability to remedy its Year 2000 problems. It claims that the proposed exchange would foster dissemination of accurate information and avoid confusion, and that it will be more efficient, both for software users and for their vendors, for SIA to obtain and disseminate information from the hundreds of vendors that support the securities industry than it would be for scores of securities firms to request information and attempt to standardize the responses.

The association also claims that vendors may benefit by not having to provide duplicative information to their many customers in the securities industry. SIA thus claims that the proposed

information exchanges will enable vendors to focus their scarce time and resources on their own product remediation efforts.

The SIA asserts that collaborative efforts to resolve the industry's Year 2000 problems are particularly appropriate in the securities industry, because of the high degree of interdependence between rivals on matters of this nature. According to the SIA, the inability of even a few firms to execute trades, transfer funds, or document transactions as a consequence of Year 2000 problems could have an adverse effect on other firms and associated industry entities despite the fact that the other firms had resolved their own Year 2000 problems. SIA also suggests that it is important that the public have confidence in the efficiency and integrity of the securities markets as a whole and that problems caused by only a few firms could greatly reduce that confidence.

"Based on the information and assurances provided to us by the SIA, and the nature of the proposed information exchanges, the Department does not believe that the proposed conduct will have anticompetitive effects," said Klein. "The information exchanges, as limited in your request letter, should not diminish competition amongst SIA's member securities firms. No pricing or customer information will be disclosed. Nor is there any proposed conduct that would directly lessen competition in the procurement of computer services. The information to be exchanged about vendors will be stated in an objective nonjudgmental manner. No recommendations will be made. Nor will collective procurement action be taken; i.e., there will be no collective boycotts. Each SIA member will make its own individual judgment about whom to hire for the necessary remedial work."

Klein also noted that it does not appear that the proposed information exchange would reduce competition amongst hardware, software or chip vendors. The type of vendor information to be exchanged does not involve pricing or customer data. While some of the

information could conceivably have some strategic impact in vendor rivalry, it appears to be of the type that would be publicly advertised rather than kept secret. In any event, the proposed information exchanges would not appear to have the capacity to lessen innovation or pricing rivalry among vendors.

Finally, Klein observed that it is possible, as the association claims, that the proposed information exchanges will be procompetitive. SIA's assertions that there is insufficient securities industry computer personnel available to allow all SIA members to rely on their own individual efforts to make their systems ready for January 1, 2000, and that the health of the industry is truly interdependent in terms of computer communications are both facially plausible. If they are true, the proposed collaboration may even be necessary to avoid serious disruption of the securities trading system. However, even if . . . the proposed collaboration were not necessary for this purpose, it could still reduce costs and/or speed up resolution of Year 2000 issues. Either type of benefit could redound to the benefit of investors and thus be viewed as output enhancing, i.e., pro-competitive.

Under the Department's business review procedure, a person or organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the activity as a violation of federal antitrust laws.

A file containing the business review request and the Department's response may be examined in the Antitrust Documents Group, Suite 215, Liberty Place, 325 7<sup>th</sup> Street, N.W., Washington, D.C. 20530. After a 30-day waiting period, the document supporting the business review will be added to the file.

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